

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MEMO ENDORSED

SARAH MORGULIS, on behalf of herself and
all others similarly situated,

Plaintiff,

-against-

Bus Patrol America, LLC,

Defendant.

Case No. 1:24-cv-00113-ER

STIPULATION FOR THE PARTIAL DISMISSAL OF COMPLAINT

WHEREAS, on March 21, 2024, Plaintiff filed her First Amended Class Action Complaint, wherein she asserted the following causes of action: (1) Unlawful Delegation of Executive Authority; (2) Unlawful Delegation of Prosecutorial Authority; (3) State Constitutional Due Process Violation; (4) State Constitutional Right to Equal Protection; (5) Unjust Enrichment; (6) Conversion; (7) Negligent Misrepresentation; (8) Fraudulent Concealment / Fraudulent Inducement; (9) Prohibition on Excessive Fines in Violation of New York State Constitution, Art. 1, Sec. 5; (10) Prohibition on Fines Without Reasonable Cause in Violation of New York Civil Rights Law 11; (11) New York General Business Law Section 349; (12) Federal Due Process Claim Under 42 U.S.C. § 1983; (13) Federal Equal Protection Claim Under 42 U.S.C. § 1983; and (14) Declaratory Judgment; and

WHEREAS, on April 12, 2024, Defendant moved to dismiss Plaintiff's First Amended Class Action Complaint; and

WHEREAS, by Opinion and Order dated August 1, 2024 (the "Opinion and Order"), the Court granted Defendant's motion to dismiss Plaintiff's First Amended Class Action Complaint in its entirety, dismissing each cause of action, and providing Plaintiff with leave to file an amended complaint; and

WHEREAS, on August 20, 2024, Plaintiff filed her Second Amended Class Action Complaint, wherein she asserted the following causes of action: (1) Unlawful Delegation of Executive Authority; (2) Unlawful Delegation of Prosecutorial Authority; (3) State Constitutional Due Process Violation; (4) State Constitutional Right to Equal Protection; (5) Unjust Enrichment; (6) Conversion; (7) Negligent Misrepresentation; (8) Fraudulent Concealment / Fraudulent Inducement; (9) Prohibition on Excessive Fines in Violation of New York State Constitution, Art. 1, Sec. 5; (10) Prohibition on Fines Without Reasonable Cause in Violation of New York Civil Rights Law 11; (11) New York General Business Law Section 349; (12) Federal Due Process Claim Under 42 U.S.C. § 1983; (13) Federal Equal Protection Claim under 42 U.S.C. § 1983; (14) Aiding and Abetting Fraud; and (15) Declaratory Judgment; and

WHEREAS, Plaintiff desires to withdraw certain of her causes of action on the basis that in view of the Court's August 21, 2024, Decision and Order, further pursuit of such causes of action would be futile;

IT IS HEREBY STIPULATED AND AGREED that pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), the following causes of action asserted in Plaintiff's Second Amended Class Action Complaint are voluntarily dismissed with prejudice: (1) Unlawful Delegation of Executive Authority; (2) Unlawful Delegation of Prosecutorial Authority; (3) State Constitutional Due Process Violation; (4) State Constitutional Right to Equal Protection; (6) Conversion; (7) Negligent Misrepresentation; (9) Prohibition on Excessive Fines in Violation of New York State Constitution, Art. 1, Sec. 5; (10) Prohibition on Fines Without Reasonable Cause in Violation of New York Civil Rights Law 11; (11) New York General Business Law Section 349; (13) Federal Equal Protection Claim under 42 U.S.C. § 1983; and (15) Declaratory Judgment; and

IT IS FURTHER STIPULATED AND AGREED that Plaintiff reserves any and all rights she has to appeal the Opinion and Order dated August 1, 2024; and

IT IS FURTHER STIPULATED AND AGREED that Plaintiff is not dismissing the following causes of action: (5) Unjust Enrichment; (8) Fraudulent Concealment / Fraudulent Inducement; (12) Federal Due Process Claim Under 42 U.S.C. § 1983; and (14) Aiding and Abetting Fraud (collectively the “Remaining Causes of Action”); and

IT IS FURTHER STIPULATED AND AGREED that Defendant reserves and does not waive its right to move to dismiss the Remaining Causes of Action in accordance with the Court’s ordered briefing schedule and reserves and does not waive any other rights that existed prior to the filing of this stipulation.

Dated: September 30, 2024

BIENSTOCK PLLC

By: /s Martin Bienstock

Martin Bienstock

BIENSTOCK PLLC

15 West 38th Street, Suite 628

New York, New York 10018

(646) 693-2934

mbienstock@bienstockpllc.com

Joseph H. Aron

3692 Bedford Avenue, Suite P2

Brooklyn, New York 11229

(718) 365-9500

jaron@aronlawpllc.com

Attorneys for Plaintiff

It is SO ORDERED.

Dated: October 2, 2024

New York, New York

NIXON PEABODY LLP

By: 

Timothy D. Sini

Neil P. Diskin

55 West 46th Street

New York, New York 10036

(516) 832-7500

tsini@nixonpeabody.com

ndiskin@nixonpeabody.com

Attorneys for Defendant



EDGARDO RAMOS, U.S.D.J.